

U. S. SENATE

Henry Ford-Newberry Election Contest

A Synopsis of

"THE CASE AGAINST TRUMAN H. NEWBERRY."

This short brief is prepared for the use of the hurried reader. A full brief covering the case at length, with references to the printed record, and the cases will be furnished to the committee and to the senators who may desire it.

The Issue—Are the Senate Seats for Sale?

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A Synopsis of

“THE CASE AGAINST TRUMAN H. NEWBERRY.”

[A more extended brief and abstract of testimony will be submitted to the Committee.]

The primary was held August 27th, 1918, the election November 5th. Mr. Newberry received a plurality over Mr. Ford of 4,335 votes, in a total of 438,452 votes.

On January 6th, 1919, Mr. Ford filed his contest in the senate, alleging unlawful expenditures of large sums of money to secure the nomination and election of Mr. Newberry and illegal expenditures of large sums for hiring workers, influencing the press, and the like.

The Supreme Court Decision.

Mr. Newberry was convicted under the National Corrupt Practices Act, of the unlawful expenditure of moneys to secure a seat in the Senate, by a jury nearly all of whom were of his own political party, before a

United States judge who had been nominated by President Taft. By a decision of five to four of the judges of the Supreme Court, it was held, not that Mr. Newberry was innocent but that the National Act, regulating primaries, was unconstitutional and that the proper place to present the charges was before the Senate of the United States.

Counter Charges Against Ford Abandoned.

Counter-charges of large expenditures were made as to Mr. Ford's campaign, but on May 2nd, 1920, these were formally withdrawn by Mr. Newberry's counsel when appearing before the committee—and no proofs were offered at any time to sustain them.

Mr. Newberry's Deplorable Affidavits.

Mr. Newberry, on August 14th, 1918, filed with the secretary of the senate, his sworn statement, in his own handwriting, as follows:

“The campaign for my nomination for United States Senator has been voluntarily conducted by friends in Michigan. *I have taken no part in it whatever, and no contributions or expenditures have been made with my knowledge and consent.*”

Similar sworn statements were filed by Mr. Newberry, August 29th, and again October 24th. In the one of August 29th, he further added:

“I have read a general public statement of Paul King, concerning the expenditures made by a voluntary committee of my friends but these were made without my knowledge or consent.”

All of these statements were proved to be wholly and lamentably untrue. Nevertheless, Mr. Newberry remained off the stand and put in no proofs.

Newberry's Paid Organization.

Mr. Newberry's campaign was conducted by a committee headed by Alan Templeton, as general chairman (who, on the witness stand declared himself to be but a figurehead), by Mr. Paul King, executive manager; Charles Floyd, secretary; Frank W. Blair, treasurer; six assistant secretaries, publicity managers, Office Manager Emery, Assistant Manager H. O. Turner, an office force of fifty or sixty, certain field men, traveling the state in different capacities, general workers covering certain fraternal, labor and farmer societies and the like, county chairmen and secretaries of each county, and hundreds of hired workers, covering the entire state.

Substantially all of the members of this vast organization were paid for their services, some by salaries and others by lump sums, except Messrs. Templeton and Blair; and Messrs. King and Floyd, also assert that they worked without compensation.

The Public Scandal.

Beginning about August 1st, and continuing until after the primary, *a great public outcry resounded over the state, charging vast and unlawful expenditures of money by Mr. Newberry and his friends.* These charges were made by other candidates and their friends (not

Mr. Ford or his friends); by former Governor Chase Osborn, who was a prominent candidate; by Lieutenant Governor Luren Dickenson, Merlin Wiley, manager of Osborn's campaign; Candidate William H. Simpson, Arthur Vandenberg, the editor of the Grand Rapids Daily Herald, and other prominent Republican newspapers of the state.

A Sinister Figure.

Mr. Fred Cody, of New York, appears at every turn as the most important factor in the senatorial campaign, next to Mr. Newberry personally. For years he has been a secret professional lobbyist, representing a number of the largest public service and other corporations. It was Cody who went to Washington, in December, 1917, and tendered the appointment of the management of the campaign, at a large salary, to Mr. Jay Hayden, Washington correspondent of the Detroit News, and who finally took Mr. Hayden to New York to meet Mr. Newberry, who renewed the offer and discussed measures for the campaign. Mr. Hayden declined.

It was Fred Cody who secured Milton Oakman for Detroit manager, and who finally picked Paul King for state-wide manager and got Mr. Newberry to secure his services. And in a hundred places, Fred Cody appears as the closest representative and friend of the candidate.

Mr. Newberry's Own Committee.

It was shown without dispute, that Mr. Newberry selected and appointed or approved each member of this committee that every act of the committee was either directed by Mr. Newberry personally or expressly approved by him, except the merest details. It was shown that he was in constant daily communication by letter, by telephone, by telegraph, and by messengers with the committee and the committee managers and members. That he received and "devoured" daily reports of all the activities of the committee and, in turn, he daily sent his directions, suggestions and advice to the committee and its managers.

Political Workers Hired.

Hundreds of workers were employed throughout the state, contrary to law, and in nearly all cases they were paid in cash, currency being much more elusive. They had a complete organization of paid workers in every county except Chippewa county, the home of Governor Osborn.

Press Subsidized.

A gigantic scheme of subsidizing the newspapers of the state by placing large and repeated advertisements, was carried out.

Large numbers of the newspapers fell into line editorially during the advertising campaign and before the primary and continued their support to the election.

The excuse made by the Newberry apologists for this scandalous employment of newspapers was two-fold. First, that Mr. Newberry was practically unknown in the state, and, second, that it was necessary in order to beat Ford. But this last was completely answered by Governor Osborn, in his letter at the time to Mr. Newberry, when he said:

“That excuse cannot be honestly made that you spent money in excess, because you had begun your reckless campaign long before Ford was mentioned and had already transgressed the law. Nor can you plead ‘you did not know.’ That would prove you to be both an ass and a liar, which I choose to think you are not.”

Vast Sums Expended.

At the interview in New York, when Mr. King was engaged as manager, Mr. Newberry inquired about the cost of a campaign, and Mr. Paul King informed him that it would cost at least \$50,000.

The report of the treasurer, made immediately after the primary, which was prepared by Emery, King and Floyd, showed expenditures totaling \$176,568.08 and receipts totaling \$178,856.

The amounts shown to have been expended on the admissions of the contestee's representatives, include not only the total receipts shown in the report as \$178,856, but about \$15,000 subsequently donated by Mr. Andrew Green (so he says) for the unpaid debts of the committee, plus \$5,083 used at the beginning of the campaign by Mr. Paul King, chairman.

This made a total of substantially \$198,000 practically undisputed. In addition, many thousands of dollars were paid throughout the state to hired workers which do not appear in the report. The office payrolls in Detroit were \$35,000, and only one check for \$1,500 appears in the check register to cover this large item. These payrolls were paid in cash weekly. When asked where the moneys came from for these payrolls, and for these workers in the state, the witnesses, like Mr. King, the manager, and Mr. Floyd, the secretary, and Mr. Turner, the assistant office manager, declared they did not know, and passed the responsibility up to Mr. Emery, who, when demanded as a witness, finally disappeared in Canada.

The proofs on behalf of the contestant showed positive expenditures substantially as follows:

The check register produced by the committee showed checks drawn for \$160,000.00	
The office payrolls in Detroit showed	
in addition	33,500.00
the fund used at the beginning by Paul King, chairman, was.....	5,083.00
The debts of the committee subsequently paid by Andrew Green, were about	15,000.00
For workers throughout the state, including \$20,000 paid to Milton Oakman of Detroit, not shown in the report, all according to the testimony of Mr. Bennett, the Government expert, at least.....	49,477.67
Total	\$263,060.67

Other large sums were expended which are shown in general but not specifically.

“All the New York bankers,” testified Mr. Lyman D. Smith, the New York broker, who said he gave ten thousand dollars, “contributed to the campaign fund to elect Newberry and defeat Ford.”

He, no doubt, exaggerated somewhat in saying *all*, but he revealed the general truth. Mysterious sources of money, evidences of much larger expenditures appeared here and there throughout the record.

The proofs of moneys paid to workers all over the state touched only the surface—a worker here and there and inasmuch as King admitted, on cross-examination, that the workers were very generally paid, the inference is irresistible that great additional sums were put into the state.

But it is not essential to the contestant's case to argue about these much vaster sums. The proven record is damning enough to unseat a dozen senators on the merits.

Where the Moneys Came From.

It is the claim of the contestant that practically all of the \$198,000 now substantially admitted to have been expended by the committee, was contributed by Mr. Newberry himself, except a few thousand dollars shown to have been gathered from various supporters in Detroit, immediately after the great public outcry was raised in the early part of August. The campaign had

been going on for six months and not a cent had been contributed by anybody except Mr. John S. Newberry, who had contributed up to August 16th, about \$84,000; and, subsequently, there was contributed in his name additional \$15,000, making in all, in his name, \$99,900.

After the public criticisms began, they seem to have scurried about and secured a number of small contributions from disinterested persons, totaling \$6,500, and further large sums were contributed in the names of other relatives of Mr. Newberry, and one ten thousand dollar item in the name of Lyman D. Smith, a broker of New York, and one item of twenty-five hundred dollars, by Mr. Frederick Brooks, of New York. It was wholly unnecessary for them to put moneys in the names of the other relatives except they were frightened by the public outcry and they sought a variety of means following August 16th, to camouflage the situation. From March 1st to August 16th (just ten days before the end of the primary campaign) John S. Newberry had apparently furnished all of the money and according to his testimony, was prepared to furnish any amount up to two hundred thousand dollars or more. But the public outcry was so great against the 'boodle' campaign that they proceeded to get contributions in the names of other relatives. The story of all these important contributions, told by the contributors themselves, who were called to the stand by the contestant—none of them by Mr. Newberry—is laughable in the extreme.

Mr. John S. Newberry's story is typical and will illustrate the pitiful efforts made to have people believe that Mr. Truman Newberry was not financing the cam-

paign. In merest outline, Mr. John S. Newberry testified that he was a younger brother of Mr. Truman Newberry, and that they had always had their accounts and dealings and offices together; that they had one common, financial secretary, Fred Smith, who held powers of attorney from both of them to check against their accounts; that they had their business transactions together and that his brother, Truman, had full authority to make investments for him and, in fact, conducted all his business for him from the time their father died. John testified that no person asked him to contribute to the campaign, that he never talked with his brother about it, or to any member of the committee, or to anybody else. He said he saw in the newspapers that his brother was thinking of running but that he did not otherwise know he was going to run. He was in Detroit up to the first of April, 1918, after which he went to Chicago in connection with some other services; that when he was leaving Detroit, he told Mr. Fred Smith, their common, joint financial secretary, that if his brother ran for senator, he, John, wished to finance the campaign. Outside of that single instruction, he never had anything further to do with it. He, in fact, never talked with any other living soul about it; he did not know except from the newspapers how much had been taken from his account to finance the campaign; he did not know whether the committee would need any money at all, he had never been informed that they would need any money, he simply assumed that every campaign committee would need money; he did not know how much, he placed no limitations on the amount, he did not know except for the newspapers how much they already had used of his funds, he never took any steps to find out, he never

asked for any account, he never took any steps to see that the money was not wasted or what it was expended for.

The testimony of other alleged contributors, Mr. A. Victor Barnes and Mr. Lyman D. Smith, both of whom were in the east and knew nothing of the campaign, is of the same type. They were in the east and nobody asked them to contribute, they merely guessed that money would be needed, they had no conversation with anybody about it, did not know that moneys were needed, and took no steps to see how the moneys were expended. They had no conversations with the candidate about it, or with any of his representatives.

Mr. Truman Newberry the Real Financier.

Mr. Fred Smith, the confidential, financial secretary, was subpoenaed by the contestant, and put upon the witness stand. He let the cat out of the bag so far as the candidate was concerned. He testified that the accounts of the Newberry estate and of Truman H. Newberry and John S. Newberry, and some other members of the family, were all kept in one office in Detroit, and under his (Smith's) control, and subject to his checks, and that funds were from time to time transferred from one to the other. That this senatorial campaign fund was made up from checks drawn against the account of John S. Newberry, but that John S. Newberry's account, to meet the campaign expenses, was replenished from time to time with funds from the account of Truman H. Newberry and other members of the family. That the drafts upon the exchequer grew to be so large as to drain the amounts on hand and that

on the 28th day of July, 1918, Mr. Truman Newberry telephoned from New York to him, Smith, about the condition of the funds and the amounts that were being used for the campaign and complained that the expenditures were running so heavy as to drain the several amounts in the several funds and demanding to know when the principal expenditures in connection with the campaign would cease and that he, Smith, informed him that the principal sources of expenditures would be cut off at the time of the primary but that he made a mistake as to dates, which he undertook to correct on the same day, by sending a telegram.

Fortunately, this telegram had been rescued from the telegraph office. The possession of this telegram forced from Mr. Smith the admissions as to Mr. Newberry's interest in the entire campaign funds referred to above. It read as follows:

“Detroit, Michigan, July 28, 1918.

Mr. Truman H. Newberry,
280 Broadway,
New York.

I misinformed you this morning the date of close of regular expenses. I should have said August twenty-seventh. The circular work, advertising, clerical help, postage and all regular overhead expenses will naturally continue until primary. Have written.

(Signed) Fred P. Smith.”

Contrast this with Mr. Newberry's oaths.

The Treasurer's Mystifying Report.

A report of receipts and expenditures by the treasurer was made and filed under the state law directly after the primary. The treasurer said he knew nothing about it personally. He was assured that it was correct and signed it. The manager of the campaign, Mr. Paul King, declared on the witness stand it was "the best report ever made." But when asked to find items in it he said he did not make it and did not know how to find them.

It contained no dates and no definite items except payments to newspapers and the like, those things which they were perfectly willing should be known.

For instance, no part of the \$5,784.25 spent upon the movie film, for which Mr. Newberry personally posed on a wooden imitation battleship, was in this report.

No one could find the immense sums paid to political workers although hundreds of such sums were proved on the witness stand at Grand Rapids, by the recipients and were not denied. The law of Michigan required an itemized statement of payments. The report was obviously made to hide and deceive. Two separate experts, put upon the stand at different times, one in Grand Rapids and one in Washington, were unable to find the important payments. No excuse or reason for such a hodge-podge of figures was offered. Floyd himself admitted that it would have been very simple to have kept records of receipts and disbursements.

False Returns.

Many of the subordinate members of the organization, who handled considerable sums in various parts of the state testified at Grand Rapids that they had made returns by directions of the managers, Floyd and others, covering only a small part of the moneys paid to them in the campaign. These returns formed the basis for the "treasurer's report."

Fraudulent Books.

The "check register" was produced and declared by both counsel for Mr. Newberry to be the complete record of all payments by the committee. In addition to the check register, the Detroit office payrolls were produced and less than one-third of the bank checks and in addition thereto, the report of the treasurer. These were all the records that were produced tending in any way to throw any light upon the expenditures of the committee.

These books (the check register and payrolls) were demonstrated to be fraudulent, incomplete, self-contradictory and *made to order* at the end of the campaign to serve a purpose—not books of original entry at all. All of the books, records and documents of original entries (except about 500 checks out of a total of 1827) were destroyed by committee agents at the time of the making up of these alleged books. *The books produced contained no entries of the thousands paid to hundreds of workers throughout the state. No*

entries in any books or memorandums were produced of these payments out in the state, and no receipts and no vouchers. Nobody on the witness stand could account for the destruction of the original books and papers. All responsibility was passed on to the disappearing witness, Emery.

This check register, which both the counsel for the contestee vouched for as complete, showed checks drawn from March 6th to May 25th, 1918, \$5,427.71, while the bank record of withdrawals on the same account showed for the same time \$20,708.92. No explanation was ever tendered for this.

This "complete" check register failed to show any payments of the office payrolls except one check for \$1,500—while the payrolls were paid every week in cash and amounted to \$35,000. King and Floyd and others were asked where the money came from to meet these payrolls, and they disclaimed all knowledge and passed the responsibility on to the disappearing witness.

This "complete" check register showed no moneys drawn for the hundreds of workers who were employed in all (but one) of the counties of the state. When asked to explain where the moneys came from to pay these workers, or to find any reference to these payments in the books, the manager of the campaign, the secretary of the campaign, the assistant office manager and others all disclaimed any knowledge and shoved the responsibility on to Mr. Emery, the disappearing witness.

Fraudulent Checks.

This "complete" check register showed that on the last day before the treasurer's report, four checks were drawn, two of them for \$24,000 to the order of B. F. Emery (the disappearing witness) and two for \$8,000 to Charles Floyd, the secretary. When the attention of Mr. King and Mr. Floyd was called to these checks, it was claimed that they were mere bookkeeping entries, "reconciling entries" on the books. And even when it was pointed out to them that these checks were actually cashed, at the bank, and the moneys withdrawn, it was still persisted that they were mere "bookkeeping entries." Floyd declared that he endorsed the two checks payable to his order and left them with the committee, but it was finally demonstrated that the moneys were actually drawn out of the bank on these checks. Neither Floyd nor King nor any other witness could account for these withdrawals or for these checks. All of the responsibility was passed on to Emery, the disappearing witness. Asked whether the committee owed anything to Mr. Emery, Mr. Floyd said not that he knew of, and no amount of questioning would bring forth any explanation whatever of these extraordinary transactions. Accordingly, we called Mr. Howard C. Beck, city auditor of Baltimore City, to examine the books and vouchers, that is all that were produced, and he testified that the moneys were actually drawn upon these checks, that they were not bookkeeping entries, and that deposits made about the same time were drawn from other sources entirely, were drawn from contributions entered in the treasurer's report and from a certain ten-thousand-dollar item apparently subscribed at the same time by Mr. John S. Newberry.

\$21,000 in a Paper Sack.

Following all this, the final witness, Mr. Fred P. Smith, the financial secretary of the Newberrys, admitted that at that time (first week in September) somebody had brought to him a paper sack containing \$21,000 in currency, and delivered it to him. No hint of this had ever before been given at any time or place in the proceedings. Asked if this was part of the \$99,900 contributed by Mr. John Newberry, he said no, it must have been that he contributed more money than that, and, at least, \$120,000. Asked to give a statement of all moneys advanced and returned *he said he could not do it because the books of the Newberrys had been stolen*, that their books of account, in which he kept track of the contributions had been stored in a barn, and when he was subpoenaed and went to get the books, papers and vouchers he found the doors open and the papers all gone. Asked what he did with the \$21,000, he thought it must have been deposited in the National Bank of Commerce in Detroit to the credit of John S. Newberry. The contestant's counsel asked to have this account examined, but this request was denied.

The Secret Bank Vault.

The office manager and his assistant kept a large box in a safety vault where they kept currency which was used for the purposes of the committee. The general manager of the campaign and the secretary testified that they knew nothing about this, but the fact remains that under their directions, large sums were paid out

in currency to workers all over the state and for office payrolls and it is quite incredible that they did not know of the bank vault. It was far simpler to draw checks from day to day and hour to hour than to go into the basement vaults of the bank and go through all of the trouble of getting currency. This was not done without a purpose.

A Distressing Exhibition.

All of the witnesses called by the contestant before the committee (except one, the bookkeeping expert) were members of the Newberry organization—all hostile witnesses, all concerned in making the best showing possible for Mr. Newberry. The evidence showed a most distressing exhibition of fraud in the contributions, fraud in the expenditures, fraud in the records, concealment of illegal payments, destruction of books, papers and vouchers, manufacture of false books and false returns by many of the county agents in which were suppressed the greater part of the moneys handled by them. All of the chief contributors to the campaign fund presented pitiful spectacles, trying to show voluntary contributions to a campaign fund that they knew nothing about, contributions they were not asked to make and for which they took no acknowledgments and for which they asked no accounting.

The Key to All This Fraudulent Conduct.

In order to understand this extraordinary record of concealment, fraud, fabrication of books, destruction of original books, records, vouchers and correspondence,

concealment of payments in currency and the juggling of funds, the sudden activity ten days before the primary to get contributions into other names and the misinforming, confusing "treasurer's report"; it is necessary to know and keep in mind three things:

First. That the law of Michigan absolutely prohibited the hiring of workers at and before the primary.

Second. That the authors of this campaign made themselves believe or they pretended to believe that they could spend enormous sums for certain purposes if the candidate himself did not participate.

Third. That a tremendous outcry about the "barrel campaign" of the Newberry forces was raised all over the state about three weeks before the primary by friends of Governor Osborn and Candidate Simpson.

In other words, the *key* to the criminal concealment, destruction of books, papers and records, manufacture of new books and general chicanery *does not* consist in the mere desire to hide and conceal a large part of the expenditures. This purpose was only secondary. The main purpose was to conceal two things, the criminal and unlawful hiring of workers all over the state and the personal participation of Mr. Newberry himself and his estate interests in the contributions and expenditures.

Knowledge and Participation of Mr. Newberry in the Campaign.

The only defense vouchsafed during this two and one-half years of delay, has been the repeated statements that Mr. Newberry personally had nothing to do with the illegalities and iniquities.

But this defense is shattered by the simple indisputable facts.

He was advised by King, the campaign manager, when he was being engaged by him, that the campaign would cost at least \$50,000. Mr. Newberry, as shown by the evidence, and by hundreds of letters and telegrams, stands revealed as the prime mover in all the work, the dark figure in the background, pulling all of the strings and directing every step. Mr. Newberry stayed in New York but he kept the wires hot. Everything was run with military precision. Each day (and often many times a day) complete written report of each and every move was forwarded to him and, in turn, he issued his instructions and advice and suggestions. He watched even the details. For example, he ordered the committee stenographers to be more careful in their work because the enclosures did not fit the envelopes, and, therefore, it was necessary to take all of the stamps off of the envelopes and re-write the envelopes. The alleged contributors paid no attention whatever to the expenditures, but Mr. Newberry himself was on the job. He demanded of his agent to know when the expenses would be reduced and he was informed and then informed again. He complained that

all of the various funds of himself and the other Newberry heirs were being drawn out to meet this campaign fund and was impatient for the end to be reached. Thus testifies his own, private, confidential, financial secretary, Mr. Fred Smith.

Throughout his correspondence with Paul King, the manager, it is shown in scores of ways that Mr. Newberry knew the campaign was costing large sums. This was pressed upon Mr. King, the manager, in various ways on cross-examination, that Mr. Newberry must have known of the large expenditures, until finally Mr. King declared "why, of course, he knew, every sane man would know that large sums of money were being expended." And yet, Mr. Truman H. Newberry, after he had been openly charged in the public press of Michigan, filed his oaths in the United States Senate for the information of the Senate and of the public of the United States, in which he swore that no contributions to his campaign and no expenditures in his campaign had been made with his knowledge or consent, and that he had nothing whatever to do with the campaign.

No Evidence by the Contestee.

It is vitally significant that Mr. Newberry offered no evidence. Charged with criminal offenses against the law, with the most foul misrepresentations under oath, he offers no explanations, no proofs. He affords no aid whatever to the committee investigating this contest. It is true that Mr. King went upon the stand at Grand Rapids and produced some illuminating correspondence.

All of the evidence given by the contestant (except an expert accountant) was dragged from members of the Newberry organization who were placed upon the witness stand against their will.

The defense was striking for its omissions and for its negative attitude and it offered no aid to the committee whatsoever.

Mr. Newberry himself charged with all these heinous offenses against law and good morals is conspicuous by his absence from the witness stand.

His factotum, Mr. Cody, the mysterious New York lobbyist, whose silent figure is seen in every important move from the engagement of the managers of the campaign down, never appears.

Milton Oakman, the first manager of the campaign and at all times manager of Wayne county (Detroit), who at first supported Osborn and then switched to Newberry, declaring to Governor Osborn that he could not afford to reject their offers, is also conspicuous for his absence.

Richard Fletcher, one of the most active lieutenants and who declared that the campaign cost nearly \$800,000 and that he knew what he was talking about; appears not at all before the committee.

B. F. Emery, the office manager, who is made "the goat" for all of the disappearing of the books, burned records, mysterious currency transactions, large cash withdrawals, refused to submit himself for examination as to his ability to testify, and disappeared into Canada.

None of the "field managers" is called by Mr. Newberry.

None of the 80-odd county chairmen or secretaries, none of the hundreds of hired workers, none of the hired orators, or the mere "talkers," who had nothing to do but talk Newberry and draw their salaries, none of the fraternal society officers or labor leaders, who were hired.

The damning silence of the defense!

The Michigan Laws.

It is not intended in this memorandum to indulge in any extended citation of the law. There are three Michigan statutes to be considered:

- (1st) The statute providing for the nomination and election of United States senators.
- (2nd) The Act governing the primaries.
- (3rd) The Corrupt Practices Act, so called, limiting expenses of nomination and election.

The first one provides:

(1) "United States senators shall be nominated and elected in the same manner as near as may be as the governor is nominated and elected; and all the provisions of law relating to the nomination and election of governor, so far as the same are applicable, shall control in the nomination and election of United States senators."

Sec. 2, Act 156, Public Acts 1915, being Sec. 228, Comp. Laws of 1915.

(2) The Primary Law of Michigan under which this primary was held is very long. It was originally Act 281 of Public Acts of 1909, and as amended consists of 56 sections. It will be necessary here to refer only to two sections, namely, Sections 45 and 48, being Sections 3554 and 3557 of the Compiled Laws of 1915.

Section 45 provides:

“Every person, who, directly or indirectly by himself or by any other person in his behalf, gives or lends or promises any money or valuable consideration * * * to or for any person in order to induce or have such person * * * support or oppose any candidate * * *; every person who receives, agrees or contracts for any money or valuable consideration, office or employment * * * for voting or for inducing or undertaking to induce any other person to vote in a particular manner * * * or on account of doing or agreeing to do any campaign work, electioneering, soliciting votes for such candidates on primary day or prior thereto * * * *it being the intent of this clause to prohibit the prevailing practice of candidates hiring with money and promises of positions, etc., workers on primary day and prior thereto* * * * shall be deemed guilty of misdemeanor * * * and upon conviction shall be punished with a fine not exceeding \$500 or by imprisonment, not more than six months, or both.”

Section 48 of the same Act provides:

“*It shall be unlawful for any other person to do or perform for or on behalf of any such candidate or to help or injure the candidacy of any candidate, any of the acts or things which it is by this act made unlawful for such candidate to do.*”

(3) The Act limiting nomination and election expenses is Act 109 of the Public Acts of 1913, consisting of 21 sections, being sections 3828 to 3848 of the Compiled Laws of 1915. This Act limits nominating-election expenses of candidates to one-half of one year's salary. It is too long to quote in full. The true construction thereof is in dispute, the contestee and his counsel claiming that it was only intended to prevent the candidate expending his own money beyond a certain sum, but that his friends could spend unlimited sums without incurring the ban of the law. We insist that the correct interpretation of the entire Act forbids the expenditure of more than the amount named, either by the candidate or by his committee, or others acting in his behalf. If the ban of the statute could be so easily wiped out as by the palpable subterfuge adopted in this case, then the statute operates only to penalize men of honor who would not resort to so low a trick.

Section 1 provides:

“No sums of money shall be paid and no expenses authorized or incurred by and on behalf of any candidate to be paid by him in order to secure or aid in securing his nomination to any public office in excess of twenty-five per cent of one year's compensation of the office.”

Further down, in the same section, it provides as follows:

“No sums of money shall be paid and no expenses authorized or incurred by or on behalf of any candidate who has received the nomination to any public office, in excess of twenty-five per cent of a year's salary.” * * *

Section 2 provides that every committee should appoint a treasurer and that no money should be expended except through him.

Section 3 provides that no money shall be expended except for certain lawful expenses as follows: Divided into eleven heads, namely, first, traveling expenses, printing, advertising, postage, freight, telegraph, public messenger services; second, dissemination of printed information; third, political meetings; fourth, rent of offices; fifth, clerks, typewriters, stenographers, janitors and messengers; sixth, challengers, allowed by law; seven, public speakers and musicians; eighth, copying election registers and poll lists and investigating the right to vote of the persons listed; ninth, making canvasses; tenth, conveying disabled voters to and from the polls; eleventh, employing attorneys licensed to practice and the necessary expenses of such counsel.

Section 4 provides that every candidate and treasurer of a political committee shall make a full, true and detailed account of all receipts and expenses and unpaid debts and obligations.

Section 11 prohibits any person from paying any expenses or making any payments excepts to a candidate or political committee.

Section 12 provides that there shall be no receipts except in the true name of the donor.

Section 13 provides that no money shall be expended from any anonymous source. Section 13 also provides imprisonment for any violation of the Act.

The Applicable Law.

We contend that the true interpretation of this last Act forbids expenditures, beyond the amounts named, by the candidate or by any political committee in his behalf and that those expenditures must be made for the lawful purposes stated in Section 3.

But in view of the provisions of the Primary Act, above quoted, it is not necessary to go into any discussion about the law of Michigan, under the facts in this case.

The law of Michigan absolutely and in the strongest possible terms forbids the expenditure of any moneys for the hiring of political workers at or before the primary.

It not only declares that the candidate shall not do it but that it shall be unlawful for *any* person to do it.

That provision of the law (which is re-enacted in substance in the Corrupt Practices Act, by Section 3), was violated from the very beginning of the campaign to its end by Mr. Newberry and his committee. They hired hundreds of workers to perform political services and to procure the votes for Mr. Newberry in every part of the state.

Knowing that this was denounced by the law and made criminal, the committee members proceeded to hide their transactions as far as it was possible to do. This is why there were no entries upon their books or a report of these transactions. This is why they hid their work-

ings under the cloak of secret payments in currency. This is why they maintained the bank vault. This is why they did not use bank checks for these payments. This is why their books were juggled. This is why their books were re-written. This is why their original vouchers, books and documents were destroyed.

Section 45 of the Primary Act, *supra*, in explicit words, declared that the practice of hiring political workers, which has prevailed in the past, was thereby prohibited. Section 48 made it plain that no person could do this hiring whether it was the candidate or anybody else, and Section 3 of the Corrupt Practices Act, limiting the amount of the expenditures, declares that neither the candidate nor the treasurer of the political committee shall expend any money except for certain specified purposes, among which the hiring of political workers to influence the votes is definitely excluded.

So Also the Common Law.

Likewise by the common law, the hiring of men in the community to work for the candidate, is immoral, corrupting and against public policy.

In this case, agents of the candidate went into nearly every county and hired influential office holders and ex-office holders, prosecuting attorneys, judges of probate, sheriffs, clerks and others to work for Mr. Newberry, who were to direct their efforts along many different lines to promote his candidacy. It is unnecessary to enter into these details. The hiring of these influential men involved the turning over of the support and votes of their friends and relations. The law penetrates the

thin disguise of its being a payment for services in the ordinary acceptation of the term and denounces it as a corrupting of the electorate. No statute is necessary. Common law and public policy forbade the practices which were so extensively carried out and which permeated the whole state.

Stirtan v. Blathen, 51 L. R. A. (N. S.), 623, 626.

U. S. Senate Election Cases, Case of Mr. Caldwell, of Kansas, page 430.

A Foul Record Indeed.

The use of vast sums of money to win the election admitted.

Other large sums proved.

Hundreds and hundreds of workers hired all over the state, directly in violation of law, both the written Statutes of Michigan and the Common Law.

Payments to these workers concealed and never reported.

The entire Press subsidized by huge advertising.

False returns by county agents, under instructions from the managers, showing but a small part of their expenditures of the moneys handled by them.

False books of account, manufactured after the conclusion of the primary.

The destruction of original books, records and vouchers.

Concealment of large numbers of expenditures by currency transactions, and at the same time pretending that their check register covered everything.

A doctored treasurer's report, containing no dates and so shaped that even experts could make neither head nor tail of it.

The open contributions substantially all made by the Newberry family, even on their face, the evidence convincing any fair mind that practically all of it was the money of Truman Newberry himself.

The books of the Newberry estate and of the individual accounts, stolen or disappearing, when needed.

The secret bank vault, with its currency transactions, placed beyond the possibility of being traced.

The fraudulent checks for large sums at the conclusion of the campaign, and the attempts to explain them as book entries only, and the final admission of carrying of \$21,000 in a paper sack to be returned to the account of John S. Newberry and the refusal to allow the examination of their bank accounts.

Finally, the frightfully false oaths submitted to the senate and the country by Mr. Newberry, that he had taken no part whatever in the campaign and that no money was received or expended with his knowledge or consent.

Surely this is a deplorable and revolting record, intensified by the absence of any proofs or explanations on the part of the contestee.

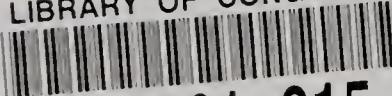
The Issue: Are the Senate Seats for Sale?

If this record of unlawful expenditures and infamous practices proved and described in the outline above, are condoned and approved, by keeping Mr. Newberry in the seat, then indeed has it been made manifest that seats in the United States Senate are for sale to the highest bidder. They may as well be auctioned off.

Not simply is the poor man barred, but every honest man also, no matter how rich he may be and no matter how rich his friends may be. The honorable man may have the wealth of Croesus but he cannot stoop to such practices as are proven in this case.

Alfred Lucking,
William Lucking,
Dale Souther,
Harold Hanlon,
Counsel for Contestant.

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